

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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-----X  
JOHN E. LAVIN,

Plaintiff,

-against-

BRIEFLY STATED, INC. and BRIEFLY  
STATED INC. PROFIT SHARING PLAN,

Defendants.  
-----X

Case No.: 09-CIV-8610 (CM)

**AFFIRMATION OF JONATHAN M. KOZAK,  
ESQ. IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

JONATHAN M. KOZAK, an attorney duly admitted to practice before this Court  
and the courts of the State of New York, hereby affirms under penalty of perjury that the

following statements are true:

1. I am a partner in the law firm of Jackson Lewis LLP, counsel for Defendant Briefly Stated, Inc. Profit Sharing Plan in the above-entitled matter.

2. I am fully familiar with the facts and circumstances contained herein. This Affirmation is submitted in support of Defendants' motion for summary judgment.

3. On or about October 8, 2009, Plaintiff filed a Summons and Complaint in the above entitled matter in the United States District Court for the Southern District of New York. A true and correct copy of Plaintiff's Complaint in this action is attached hereto as Exhibit **A**.

4. On or about January 6, 2010, Defendant Briefly Stated, Inc. Profit Sharing Plan filed its Answer to Plaintiff's Complaint. A true a correct copy of Defendant Briefly Stated, Inc. Profit Sharing Plan's Answer, with its attachments, is attached hereto as Exhibit **B**.

5. On or about January 6, 2010, Defendant Briefly Stated, Inc. filed its Answer to Plaintiff's Complaint. A true and correct copy of Defendant Briefly Stated, Inc.'s Answer is attached hereto as Exhibit **C**. (Attachments to Briefly Stated, Inc.'s Answer have been omitted since they are identical to the attachments appended to Briefly Stated, Inc. Profit Sharing Plan's Answer.)

6. True and correct copies of documents produced by Defendants to Plaintiff during discovery in this matter (marked "D-\_\_\_") cited in Defendants' Local Civil Rule 56.1 Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried, including the administrative record (D-001 through D-110), are attached hereto as Exhibit **D**.

7. True and correct copies of documents produced by Plaintiff to Defendants during discovery in this matter (marked "Lavin-\_\_\_") cited in Defendants' Local Civil Rule 56.1

Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried are attached hereto as Exhibit E.

8. On April 6, 2010, Plaintiff's counsel conducted the deposition of Briefly Stated, Inc. Profit Sharing Plan's former third-party administrator, David Weinstock. True and correct copies of relevant pages from the transcript of Mr. Weinstock's deposition, cited by Defendants in their Statement of Undisputed Material Facts in Support of Defendants Motion for Summary Judgment, are attached hereto as Exhibit F.

9. Copies of cases cited in the accompanying Memorandum of Law in Support of Defendants' Motion for Summary Judgment reported on LEXIS are attached hereto as Exhibit G.

WHEREFORE, for the reasons set forth in Defendants' accompanying Memorandum of Law, Defendants respectfully request that this Court grant their motion for summary judgment in its entirety.



Jonathan M. Kozak

Dated: May 17, 2010  
White Plains, New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOHN E. LAVIN,

Plaintiff,

-against-

BRIEFLY STATED, INC. and BRIEFLY  
STATED INC. PROFIT SHARING PLAN,

Defendants.  
-----X

Case No.: 09-CIV-8610 (CM)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 17<sup>th</sup> day of May, 2010, I electronically filed and served a copy of the Affirmation Of Jonathan M. Kozak, Esq. In Support Of Defendants' Motion For Summary Judgment, with exhibits, through the U. S. District Court for the Southern District of New York CM/ECF system and via Federal Express, overnight mail, postage prepaid and addressed as follows:

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*Attorneys for Plaintiff*

  
Jonathan M. Kozak